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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

DALTON H. PETREA,

Respondent Below,
Appellant,

VS.

JOSEPHINE S. PETREA,

Petitioner Below,
Appellee,

79-6496

NO. , 1980

AFFIDAVIT IN SUPPORT OF PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, DALTON H. PETREA, being first duly sworn according to law depose and say that I am the Appellant in the above entitled cause, and, in support of my application for leave to proceed without being required to prepay costs or give security, state as follows:

1. Because of my poverty, I am unable to pay the costs of the said cause.

2. I am unable to give security for the same.

3. I believe I am entitled to take an appeal in the said cause.

Dalton H. Petrea

Dalton H. Petrea PRO SE

SWORN TO AND SUBSCRIBED, before me, this 25 day of April, 1980.

Notary Public

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IN THE SUPREME COURT OF THE UNITED STATES

DALTON H. PETREA,
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Appellant,
VS.
JOSEPHINE S. PETREA,
Petitioner Below,
Appellee,

79-6496

NO. , 1980

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant, DALTON H. PETREA, being without sufficient funds asks leave to file the attached appeal to the Supreme Court of the United States without pre-payment of costs or security and to proceed in forma pauperis. Appellant's affidavit in support of this motion is attached hereto.

Dalton H. Petrea
Dalton H. Petrea PRO SE

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Petitioner Below,
Appellee,

79-6496

NO. ,1980.

JURISDICTIONAL STATEMENT

Jurisdiction for this appeal lies in this Court under the Fifth Amendment to the U.S. Constitution in that "No person shall be... deprived of life, liberty, or property, without due process of law."

Fundamental to due process is that all citizens of the United States have a right to be tried, or have their case heard, before a lawful tribunal that shall be subordinate to the Constitution of the United States as the supreme Law of the Land. This is true, so much so, that Article VI of the Constitution provides that: "the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding."

Failure of a state, or its judges, to comply with the strict requirements of ths Supremecy Clause of ths United States Constitution is to deny a citizen of these United States of rights retained by the people under the Ninth Amendment and if a man is deprived of life, liberty, or property, without due process of law, then that citizen is compelled into involuntary servitude in contravention to the Thirteenth Amendment to the United States Constitution.

Appellant in the instant case, as is every citizen in the State of Delaware, is deprived of constitutional rights enjoyed by citizens of other states in that Article IV of the Delaware Constitution is in direct conflict to the Fourteenth, Fifteenth and Twenty-Sixth Amendments and the Federal Statutes passed by the U.S. Congress pertaining thereto.

The Fourteenth Amendment to the Constitution, Section 2, commands that the Judicial officers (Judges) of a State be elected; and, unlike any other amendment, provides a specific penalty, by loss of representation in the U.S. Congress, to the state that, which among other requirements, fails to elect its Judicial officers.

Article IV of the Delaware Constitution provides that the Judicial officers (Justices, Chancellors, Judges and Justices of the Peace) "shall be appointed by the Governor, by and with the consent of a majority of all the Members elected to the Senate." In fact, other than the Register of Wills, no Judicial officer of the State of Delaware is elected by the inhabitants of the State, despite the explicite command contained in the Fourteenth Amendment to the U.S. Constitution that the Judicial officers of a State as well as Executive and members of the Legislature be elected by the inhabitants of the State.

The Fifteenth and Twenty-Sixth Amendments extended the franchise rights of certain citizens of the State, but, it did not reduce the rights of the inhabitants to elect their Judicial officers and the various Acts of Congress have further supported such election rights through the enforcement provisions of the Thirteenth, Fourteenth, Fifteenth and Twenty-Sixth Amendments.

Thus the question that properly belongs before this court is as follows:

> "IS APPELLANT (OR ANY CITIZEN OF THE STATE OF DELAWARE) DENIED DUE PROCESS UNDER THE U.S.CONSTITUTION WHEN THE JUDICIAL OFFICERS OF THE STATE OF DELAWARE ARE NOT ELECTED BY THE INHABITANTS OF THE STATE AS IS COMMANDED BY THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION WHEN SUCH ELECTIVE PROCESS IS AVAILABLE IF HE WERE A CITIZEN OF ANOTHER STATE OR CAME WITHIN ITS JURISDICTION."

WHEREFORE, this appeal from the Order of the Supreme Court of the State of Delaware lies properly to this Honorable Court and the provisions of 28 U.S.C. § 2403 may also be applicable.

Dalton H. Petrea

Dalton H. Petrea PRO SE

FILED

APRIL 28, 1980

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DALTON H. PETREA, Respondent Below, Appellant, VS. JOSEPHINE S. PETREA, Petitioner Below, Appellee,	)	No. 103, 1979 (Family Court, New Castle County, Case No. 999,1978)

NOTICE OF APPEAL

PLEASE TAKE NOTICE, that Respondent Below, Appellant, DALTON H. PETREA, hereby gives notice of appeal to the Supreme Court of the United States against the Order of the Supreme Court of the State of Delaware, dated, January 28, 1980, in its entirety, in the above captioned case, basing his appeal under Article VI of the Constitution of the United States and the Fifth, Ninth, Thirteenth, Fourteenth, Fifteenth, and Twenty-Sixth Amendments thereto and that 28 USC § 2403 may be applicable.

Dalton H. Petrea

Dalton H. Petrea PRO SE
1739 W. 5th Street
Wilmington, DE 19805
(302) 571-8383

AFFIDAVIT OF SERVICE

Appellant, DALTON H PETREA, being first duly sworn according to law states that he has served upon H. Alfred Tarrant, attorney for the Appellee, and upon the Supreme Court of the State of Delaware, one copy each of the attached Notice of Appeal in Civil Action No. 103,1979 by mailing, first class postage prepaid, addressed as follows:

H. ALFRED TARRANT, JR., ESQ.
COOCH AND TAYLOR
SIXTH FLOOR, MARKET TOWER
901 MARKET STREET
WILMINGTON, DELAWARE 19801

AND

CLERK OF THE COURT
DELAWARE SUPREME COURT
THE GREEN
DOVER, DELAWARE 19901

Dalton H. Petrea PRO SE

SWORN TO AND SUBSCRIBED, before me, this 25 day of April, 1980.

Notary Public

IN THE SUPREME COURT OF THE STATE OF DELAWARE

D.H.P.,	§	
	§	
Respondent Below,	§	
Appellant,	§	
	§	No. 103, 1979
v.	§	(Family Court, New Castle
	§	County, Case No. 999, 1978)
J.S.P.,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: January 11, 1980
Decided: January 28, 1980

Before DUFFY, McNEILLY and HORSEY, Justices.

ORDER

This 28th day of January, 1980.

Upon consideration of the briefs submitted by the parties and their oral arguments before this Court on January 11, 1980, it appears to the Court that:

(1) The parties were divorced on July 20, 1978.

(2) On April 17, 1979, subsequent to an ancillary hearing, the Family Court awarded the petitioner attorney's fees under 13 Del.C. § 1515, and divided the marital property of the parties under 13 Del.C. § 1513.

(3) The appellant contests the decision of the Family Court alleging that;

(a) the Court below abused its discretion under § 1515 by failing to note the reasons for its award of attorney's fees, and

(b) the Court below erred in determining that the appellant's rights under a thrift/pension plan were marital property under § 1513.

(4) The award of attorney's fees was not an abuse of discretion because the reasons for the award appear obvious upon a reading of the record. Husband M v. Wife D, Del. Supr., 399 A.2d 847 (1979).

(5) The meaning of "marital property" is broad enough to encompass the appellant's rights under his thrift/pension plan. See, In re Marriage of Brown, Cal. Supr., 544 P.2d 561 (1976).

NOW, THEREFORE, IT IS ORDERED that the decision of the Family Court be, and is hereby

AFFIRMED.

BY THE COURT:

John J McNally

Justice

Do-71-6476

THE FAMILY COURT OF THE STATE OF DELAWARE
FOR NEW CASTLE COUNTY
600 MARKET STREET - P.O. BOX 2359
WILMINGTON, DELAWARE 19899

CHAMBERS OF
JUDGE JAMES J. HORGAN

April 17, 1979

H. Alfred Tarrant, Jr., Esquire
Cooch and Taylor
Sixth Floor, Market Tower
901 Market Street
Wilmington, Delaware 19801

Michael P. Maguire, Esquire
Attorney at Law
1200 North Van Buren Street
Wilmington, Delaware 19806

Re: In Re the Marriage of Josephine S. Petrea
and Dalton H. Petrea
Petition No. 999, 1978

Gentlemen:

Petitioner Josephine S. Petrea, age 42, and respondent Dalton H. Petrea, age 43, were married on March 16, 1956. They separated on or about November 9, 1977. There were three children born of the marriage, one of which is still a minor and resides with the petitioner. The parties were divorced by this Court on July 20, 1978. The issues for the Court to decide are whether or not to grant attorney's fees to the wife and what division should be made of the marital assets.

Property Division. The major asset of the parties is their home located at 2513 Grendon Drive, Grendon Farms. That home is valued at between $45,000 and $48,500. It has a mortgage balance of $6,152. The petitioner desires to have the home awarded solely to her. Respondent requests that the equity in the home be divided equally. Along those lines, he requests that he be given a second mortgage for his one-half share of the equity which would have an interest rate of 4% and be payable semiannually until the petitioner no longer resides at the residence or the minor child reaches eighteen, whichever is first. Both parties to this litigation are employed. The petitioner is employed by the Bank of Delaware and earns approximately $10,335 per year (that includes estimated bonus). The respondent's income is approximately $20,000 per year. Thus, he makes roughly twice as much as she does. The petitioner has been employed for approximately

HATJr:jsz
4-23/79
78/80

Ds 77-6496

IN THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE THE MARRIAGE OF	:	
JOSEPHINE S. PETREA	:	
Petitioner	:	No. 999, 1978
A N D	:	
DALTON H. PETREA	:	
Respondent	:	O R D E R

AND NOW, TO WIT, this day of 1979 an ancillary hearing having been conducted and the Court having announced its decision in writing on April 17, 1979 it is ORDERED:

1. With respect to the marital home at 2513 Grendon Drive, Wilmington, Delaware:

a) Respondent shall forthwith convey to petitioner all his right, title and interest in and to such property;

b) Simultaneously with the delivery of the deed petitioner shall deliver to respondent a second mortgage in the principal amount of $13,949.33 payable when petitioner is no longer domiciled in the house or the youngest child of the marriage, David, born September 6, 1966, attains the age of 18 years, whichever first occurs, with 4% annual interest payable semi-annually until the mortgage has been paid.

2. Respondent shall be the sole owner of the EXXON stock, valued at approximately $18,000.00, which is held in his profit-sharing/pension plan.

3. Each party shall hereafter be the sole owner of the motor vehicles now titled in his or her individual name.

4. Respondent shall be entitled to remove from the marital home a tape deck and speakers, all power tools except the lawn mower and a selection of kitchen utensils and dishes to be amicably agreed upon; petitioner shall be the sole owner of all other marital household furnishings.

5. Respondent shall maintain and pay for the insurance coverage upon his life in force as of April 3, 1979 and shall designate son David as beneficiary thereon until such time as the said son attains the age of 18 years.

6. Respondent shall deliver to the two daughers of the marriage the insurance policies upon their lives.

7. Respondent shall, on or before the expiration of ninety (90) days from the date of this order pay H. Alfred Tarrant, Jr., Esquire, the sum of $1,865.00 on account of legal services and disbursements incurred by petitioner.

FORM CONSENTED TO:

_____
H. ALFRED TARRANT, JR.
Attorney for Petitioner

_____
MICHAEL P. MAGUIRE,
Attorney for Respondent

/s/ James J. Horgan
JUDGE